

United States Bankruptcy Court
Western District of Virginia

In re **Meloney Bandy Culley**)

Debtor) Case No.
) **23-60016**
) CHAPTER 13
)

RESPONSE TO ORDER TO SHOW CAUSE (DOC ECF Doc 50)

The debtor's undersigned counsel admits that he should have served the chapter 13 plan or filed an appropriate motion in response to the Clerk's deficiency notice (ECF Doc No 48), but did neither. Counsel further states as follows:

1. On September 29, 2023 the court entered an order modifying the automatic stay and requiring the debtor within 21 days. to filed an modified plan to include post petition mortgage arrearages.
2. The debtor and undersigned counsel had been working with Rocket Mortgage to obtain a loan modification with Rocket Mortgage to defer the post petition arrearages since early September 2023.
3. On October 5, 2023 debtor emailed undersigned counsel indicating that a loan modification had been approved that deferred all post petition arrearages. The debtor informed counsel that she was awaiting a call from the closing company to schedule the signing the loan modification documents. By November 9, 2023, however, despite several inquiries, Rocket Mortgage had not sent any loan modification documents to debtor or the closing agent.
4. Since the September 29, 2023 order modifying stay required that an amended plan be filed to pay the mortgage arrearages, counsel filed that amended plan on November 9, 2023. However, on this same date,counsel and the debtor received an e-mail from the Rocket Mortgage Loan Modification team reaching out to set a date to sign the loan modification documents. Under these circumstances, counsel decided to comply with the order modifying stay by filing the amended plan, but counsel also decided not to serve the plan-- first, because a loan modification eliminating the arrearages seemed imminent, and second, because it would be confusing and misleading to creditors to notice a plan that seemed unlikely to be confirmed.

5 The loan modification documents were signed on November 14, 2023, but the debtor was not given a copy of the signed loan modification documents at that time. Despite several requests, the debtor and counsel did not receive a signed copy of the signed loan modification documents from Rocket Mortgage until December 7, 2023.

6 The Clerk issued its deficiency notice because of the lack of service of the amended plan on November 16, 2023. Counsel should have either served the plan or filed an appropriate motion to extend within the 14 days granted by the deficiency notice, but failed to do so.

7. Counsel filed an order withdrawing the plan on or about December 13, 2023, and filed a motion for approval of the loan modification on December 21, 2023. Counsel filed an amended plan on December 12, 2023 that omitted the post petition arrearages and cured an intervening default in chapter plan payments.

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Debtor's counsel

Certificate of Service

I hereby certify that a copy of the foregoing was served electronically on the chapter 13 trustee this 8th day of January, 2024

/s/ Steven Shareff